

105TH CONGRESS  
2D SESSION

# S. 2630

To amend the Internal Revenue Code of 1986 to provide a special rule regarding allocation of interest expense of qualified infrastructure indebtedness of taxpayers.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 14 (legislative day, OCTOBER 2), 1998

Mr. MACK introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a special rule regarding allocation of interest expense of qualified infrastructure indebtedness of taxpayers.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TREATMENT OF INTEREST EXPENSE OF QUALI-**  
4 **FIED INFRASTRUCTURE INDEBTEDNESS.**

5 (a) IN GENERAL.—Section 864(e) of the Internal  
6 Revenue Code of 1986 (relating to rules for allocating in-  
7 terest, etc.) is amended by redesignating paragraphs (6)  
8 and (7) as paragraphs (7) and (8), respectively, and in-  
9 serting after paragraph (5) the following new paragraph:

1           “(6) TREATMENT OF CERTAIN INTEREST EX-  
2           PENSE RELATING TO QUALIFIED INFRASTRUCTURE  
3           INDEBTEDNESS.—

4                   “(A) IN GENERAL.—Interest expense at-  
5           tributable to qualified infrastructure indebted-  
6           ness of a taxpayer shall be allocated and appor-  
7           tioned solely to sources within the United  
8           States and the taxpayer’s assets (whether or  
9           not held in the United States) shall be reduced  
10          by the amount of qualified infrastructure in-  
11          debtedness.

12                   “(B) QUALIFIED INFRASTRUCTURE IN-  
13          DEBTEDNESS.—

14                   “(i) IN GENERAL.—For purposes of  
15          this paragraph, the term ‘qualified infra-  
16          structure indebtedness’ means debt in-  
17          curred to carry on, or to acquire, build, or  
18          finance property used predominantly in,  
19          the trade or business of the furnishing or  
20          sale of electrical energy or natural gas in  
21          the United States. The determination of  
22          whether debt constitutes qualified infra-  
23          structure indebtedness under the previous  
24          sentence shall be made at the time the  
25          debt is incurred.

1 “(ii) REQUIRED RATE REGULATION.—

2 The rates for the furnishing or sale of elec-  
3 trical energy or natural gas by a trade or  
4 business under clause (i) must be estab-  
5 lished or approved by—

6 “(I) the District of Columbia or  
7 a State or political subdivision there-  
8 of,

9 “(II) any agency or instrumental-  
10 ity of the United States, or

11 “(III) a public service or public  
12 utility commission or other similar  
13 body of the District of Columbia or of  
14 any State or political subdivision  
15 thereof.

16 “(iii) LIMITATION.—If the rate regu-  
17 lation under clause (ii) applies only to a  
18 portion of the trade or business of the fur-  
19 nishing or sale of electrical energy or natu-  
20 ral gas, the debt incurred to carry on, or  
21 to acquire, build, or finance property used  
22 in, such trade or business shall constitute  
23 qualified infrastructure indebtedness only  
24 to the extent that the ratio of the total  
25 outstanding qualified infrastructure indebt-

1 edness with respect to such trade or busi-  
 2 ness (including such debt) to the total out-  
 3 standing indebtedness with respect to such  
 4 trade or business does not exceed the ratio  
 5 of the assets used in the portion of the  
 6 trade or business that is subject to such  
 7 rate regulation to the total assets used in  
 8 such trade or business. For purposes of  
 9 the determination under the preceding sen-  
 10 tence, assets shall be measured using book  
 11 value for taxation purposes unless the tax-  
 12 payer makes an election to use fair market  
 13 value. Such election shall apply to the tax-  
 14 able year for which the election is made  
 15 and all subsequent taxable years unless re-  
 16 voked with the consent of the Secretary.”

17 (b) EFFECTIVE DATE.—

18 (1) IN GENERAL.—The amendments made by  
 19 this section shall apply to debt incurred in taxable  
 20 years beginning after the date of enactment of this  
 21 Act.

22 (2) OUTSTANDING DEBT.—In the case of debt  
 23 outstanding as of the date of enactment of this Act,  
 24 the determination of whether such debt constitutes  
 25 “qualified infrastructure indebtedness” shall be

1       made by applying the rules of section 864(e)(6)(B)  
2       of the Internal Revenue Code of 1986, as added by  
3       this section, on the date such debt was incurred.

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